Claim No: M01EC325

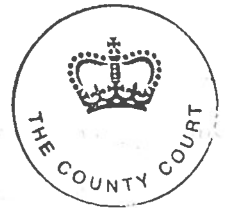
IN THE COUNTY COURT AT CLERKENWELL AND SHOREDITCH

The Gee Street Courthouse
29-41 Gee Street
London
EC1V 3RE

Date: 08/05/2026

Before :

HHJ RICHARD ROBERTS
Senior Circuit Judge and Designated Civil Judge for London East



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Between :

QUADRANT-BROWNSWOOD TENANT CO-OPERATIVE LIMITED	**Respondent/ Claimant**
- and -	
JOSIE HITCHENS	**Appellant/ Defendant**

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Ms Joanne Wicks of King's Counsel (instructed by **Kennedys LLP pro bono through Pro Bono Connect**) for the **Appellant/Defendant,**
Mr Brynmor Adams (instructed by **Messrs Knights**) for the **Respondent/Claimant**

Hearing date: 8 April 2026 with hand down on 8 May 2026

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Approved Judgment

This judgment was handed down remotely at 2:00pm on 8 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ RICHARD ROBERTS

HHJ RICHARD ROBERTS:

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Introduction

1. This is the hearing of the Appellant's rolled up appeal against the decision of District Judge Naidoo (the District Judge), given on 23 September 2025 (drawn 25 September 2025) (tab 5, 30-32).

2. Ms Joanne Wicks of King's Counsel appears on behalf of the Appellant, acting pro bono through Pro Bono Connect and Advocate. Mr Brynmor Adams of Counsel appears on behalf of the Respondent. I am grateful to both Counsel for their skeleton arguments.

3. I thank Ms Wicks for her very lucid and concise exposition of the law.

4. There is before the Court:

   i) An appeal bundle in paper and electronic format (383 pages),

   ii) A joint authorities bundle (273 pages)

   iii) The Appellant's additional authorities bundle (45 pages).

   References to page numbers are to the paper appeal bundle.

Parties

5. The Respondent landlord is a fully mutual housing co-operative, i.e. each tenant is also a member of the landlord.

6. The Appellant occupies 35a Digby Crescent, London, N4 2HS (the Property) pursuant to a written tenancy agreement dated 18 June 1999 (the Agreement) (tab 9, 52-63).

Tenancy agreement

7. The Agreement states (tab 9, 52),

   > "THIS TENANCY AGREEMENT IS BETWEEN
   >
   > Quadrant-Brownswood Tenant Co-operative Limited … which is registered as a Fully Mutual Co-operative Housing Association under Section 13 of the Housing Act 1974 …

AND JOSIE HITCHENS ('the tenant')

...

The Tenancy begins on 18 JUNE 1999"

8. The Agreement states (tab 9, 59):

> "4. The tenancy ends on the death of the tenant except in cases where the tenancy succeeds to a successor as defined below.
>
> On the death of the tenant the tenant's spouse (which includes a person living with a tenant as a husband or wife, or gay or lesbian partner) shall have the right to succeed to the tenancy provided that the person occupied the accommodation as his/her only principal home at the time of the tenant's death and that the tenant was not a successor him/herself.
>
> In cases where a person has succeeded to a tenancy, that tenancy shall be known as a tenancy by succession and there will be no further rights of succession"

9. The Agreement states under the heading "THE TENANT'S OBLIGATIONS" (tab 9, 56),

> "12. **Assignment**
>
> Not to assign the tenancy except in furtherance of a court order made under section 24 of the Matrimonial Causes Act 1973."

10. Under the heading "ENDING THE TENANCY", the Agreement states (tab 9, 58-59),

> "1. The tenant has the right to end the tenancy at any time, by giving 4 weeks notice in writing.
>
> 2. ...
>
> The co-op may bring the tenancy to an end by giving the tenant 4 weeks notice in the statutorily prescribed form i.e. by issue of a Notice to Quit.
>
> The Notice to Quit will be issued at the tenant's last known address.
>
> The co-op will only issue a Notice to Quit in one or more of the following circumstances:
>
> a) Rent arrears, where arrears were outstanding both at the date of the service of the Notice to Quit and at the start of the court proceedings.
>
> ...

> d) The tenant, his/her family or visitors have assaulted, harassed, threatened or caused nuisance or annoyance to any person residing, visiting or otherwise engaged in a lawful activity in the locality. For these purposes locality means within 500 metres of the tenant's property.
>
> ...
>
> n) The tenant has broken or not performed any obligation of the tenancy."

11. All the circumstances in which the Respondent can bring the tenancy to an end are set out in clause 2 a) – n).

12. Under the heading "THE TENANT'S RIGHTS", the Agreement states (tab 9, 57),

> "2. The tenant may take in persons as lodgers or sub-let part of the dwelling only with the permission of the Co-op, which must be obtained before taking in any lodgers/sub-tenants. ...
>
> 3. The tenant may make improvements, alterations and additions to the premises including the erection of a television aerial, external decoration and additions to, or alterations in, the Co-op's installations, fixtures and fittings ...
>
> For any improvement, alteration and addition to the external or internal communal areas, the tenant must also obtain the written consent of the other details in the building.
>
> ...
>
> 5. The tenant has the right to exchange this tenancy with that of another tenant of a registered housing association, registered housing co-operative, local authority or new town subject to the written consent pf the Co-op, which shall only be withheld on the grounds set out in the supporting documentation to this agreement. The other tenant must also have the written consent of his or her landlord to exchange and must either be a secure tenant, an assured tenant, or a tenant of a fully mutual co-op with a similar right to exchange as provided for by this agreement."

Notices

13. On 28 January 2025, the Respondent sent the Appellant two notices:

    i) A notice to quit (tab 9, 80-81)

    ii) A notice pursuant to s.146 of the Law of Property Act 1925 (tab 9, 111-112)

Procedural history

14. Proceedings were commenced on 3 March 2025. The amended Particulars of Claim are dated 12 June 2025 (tab 9, 46-50). The amended Defence and Counterclaim is dated 23 May 2025 (tab 10, 123-121). The Reply to Amended Defence and Defence to amended Counterclaim is dated 18 June 2025 (tab 12, 129-140).

15. By an order of 28 May 2025 (tab 11, 127-128), Deputy District Judge Blake (wrongly referred to in the order as Deputy Circuit Judge Blake) gave directions. These included (tab 11, 128),

> "5. Hearing to be listed for a 2 hour preliminary hearing on the first open date after 23 July 2025 for the court to determine the legal status of the Defendant's occupation of the property and further allocation and directions thereafter."

16. The preliminary issue was to determine the legal status of the Appellant's occupation of the Property.

17. The Appellant's case is that applying the ordinary principles of construction, what the parties intended was that the Appellant should have a tenancy for her life or the life of her successor, determinable prior to her or her successor's death in accordance with clauses 1 and 2. Ms Wicks says that this is an express agreement for a lease for "life or lives" or alternatively a periodic tenancy with an invalid fetter on the landlord's right to determine. By virtue of s.149(6) of the LPA 1925 an express tenancy for life or lives is now a tenancy for 90 years, subject to the rights under clauses 1 and 2 of the Agreement.

18. The Respondent's case is that applying the ordinary principals of construction, the parties intended to create a contractual licence.

19. The District Judge heard the preliminary issue on 8 September 2025. The Appellant appeared in person, assisted by a McKenzie Friend, and Mr Phillips of Counsel appeared on behalf of the Respondent.

20. The District Judge handed down a reserved judgment (tab 6, 33-39) on 23 September 2025, in which she said,

> "10. The key distinguishing factor in *Southward* was that the agreement contained provision for service of a notice to quit and did not contain any provision for forfeiture. That is the same in this case.
>
> ...
>
> 23. Mr Justice Hildyard in *Southward* states at paragraph 91: 'I have concluded that the 'rule' does not depend for its publication on the parties' intentions; But the judgments of the Supreme Court in the *Mexfield* case leave open the possibility that it may be disapplied where those intentions and fundamental aspects of

the agreement would be confounded by it.' I agree with this analysis.

24. In this case, the agreement contains material terms in relation to the circumstances in which the tenancy can be determined by service of a notice to quit. In this case, as in *Southward*, the application of the 'rule' discussed above must yield to the terms of the agreement; if not, a fundamental aspect of the agreement would be confounded by the application of the rule. The application of the common law rule cannot result in such vital terms of the agreement being superseded, particularly where the purpose behind the common law rule is to save an agreement which would otherwise fail for lack of certainty. Further, there is no mention of forfeiture or re-entry in the agreement which distinguishes this case from *Mexfield* and is more consistent with a contractual licence. The fact that the agreement says it ends with the tenant's death or succession is not relevant as it does not specify that this is the only way in which the tenancy can end. Save that it describes itself as a tenancy, which it cannot be, there is no contradiction in this agreement which requires the court to disregard some terms in favour of others.

25. In conclusion, the Defendant is a contractual licensee and does not occupy pursuant to a tenancy for life which becomes a long lease pursuant to s.149(6) of the Law of Property Act 1925."

21. The District Judge's order provides inter alia (tab 5, 30-32),

"AND UPON the court having found that the agreement between the parties is a contractual licence

...

AND UPON two of the Defendant's neighbours having brought a claim against her for an injunction and damages pursuant to the Protection from Harassment Act 1997 which was heard by Her Honour Judge Bloom in claim number K04EC512 and resulted in both an injunction being granted and damages being awarded on 20th December 2024; and upon the Claimant relying upon the same as a breach of the licence agreement which permitted them to serve notice to quit

AND UPON the court being bound by the findings of the Circuit Judge and the Claimant being entitled to rely upon them as a breach of the contractual licence

...

and the court orders that

...

> 3. The Defendant do give the Claimant possession of the premises at 34a (sic, should read 35a) Digby Crescent, London, N4 2HS on or before 21st October 2025."

Legal framework

22. As Ms Wicks says in her skeleton argument at paragraph 11, the preliminary issue engages the long-established principle that an agreement for an uncertain term cannot be a tenancy. Lord Neuberger said in *Mexfield Housing Ltd v Berrisford* [2011] UKSC 52, [2012] 1 AC 955,

> "33. Following the decision of the House of Lords in *Prudential* [1992] 2 AC 386, the law appeared clear in its effect, intellectually coherent in its analysis, and, in part, unsatisfactory in its practical consequences. The position appears to have been as follows. (i) An agreement for a term, whose maximum duration can be identified from the inception can give rise to a valid tenancy; (ii) an agreement which gives rise to a periodic arrangement determinable by either party can also give rise to a valid tenancy; (iii) an agreement could not give rise to a tenancy as a matter of law if it was for a term whose maximum duration was uncertain at the inception; (iv) (a) a fetter on a right to serve notice to determine a periodic tenancy was ineffective if the fetter is to endure for an uncertain period, but (b) a fetter for a specified period could be valid.
>
> ...
>
> 36. A tenancy for life is a term of uncertain duration, and it was a species of freehold estate prior to 1926, but, in the light of section 1 of the 1925 Act, if it was to retain its status as a legal estate, it could only be a term of years after that date."

23. Prior to the Law of Property Act 1925, at common law, where an agreement was made with an individual (as opposed to a company or corporation) for an uncertain term, it was treated as a tenancy for the life of the tenant, determinable before the tenant's death according to its terms. As was said by Lord Neuberger at paragraph 44 and Lord Dyson at paragraph 117 of *Mexfield*, the common law rule did not depend on the intention of the parties.

24. Section 1 of the Law of Property Act 1925 reduced the legal estates in land to the fee simple and the term of years absolute, the latter being defined to exclude leases for life or lives, by s.205(1)(xxvii)). It was therefore necessary to deal with arrangements which, prior to 1926, had created a lease for life or lives, whether expressly or by virtue of the operation of the common law rule.

25. S.149(6) of the Law of Property Act 1925 (s.149(6)) relevantly provides:

> "Any lease...at a rent...for life or lives...or any contract therefor, made before or after the commencement of this Act...shall take effect as a lease...or contract therefor, for a term

> of ninety years determinable after...the death...of the original lessee or the survivor of the original lessees by at least one month's notice in writing given to determine the same on one of the quarter days applicable to the tenancy...Provided that...
>
> (c) if the lease...or contract therefor is made determinable on the dropping of the lives of persons other than or besides the lessees, then the notice shall be capable of being served after the death of any person or of the survivor of such persons (whether or not including the lessees) on the cesser of whose life or lives the lease...or contract is made determinable, instead of after the death of the original lessee or of the survivor of the original lessees;
>
> (d) if there are no quarter days specially applicable to the tenancy, notice may be given to determine the tenancy on one of the usual quarter days."

Mexfield Housing Co-operative Ltd v Berrisford

26. In *Mexfield Housing Cooperative Limited v Berrisford* [2011] UKSC 52, the facts were as follows. The parties had entered into an agreement described as an "occupancy agreement". The rent was paid weekly. Clause 1 of the agreement stated that the tenant took a property owned by the landlord "from 13th December 1993 and thereafter from month to month until determined as provided in this Agreement". In *Mexfield* Lord Neuberger said,

> "5. The only provisions of the Agreement which expressly provided for its determination were clauses 5 and 6, which were in these terms:
>
> '5. This Agreement shall be determinable by [Ms Berrisford] giving [Mexfield] one month's notice in writing.
>
> 6. This Agreement may be brought to an end by [Mexfield] by the exercise of the right of re-entry specified in this clause but ONLY in the following circumstances:
>
> a) If the rent reserved hereby or any part thereof shall at any time be in arrear and unpaid for 21 days ...
>
> b) If [Ms Berrisford] shall at any time fail or neglect to perform or observe any of the [terms of] this Agreement which are to be performed and observed by [her]
>
> c) If [Ms Berrisford] shall cease to be a member of [Mexfield]
>
> d) If a resolution is passed under ... [Mexfield's] Rules regarding a proposal to dissolve [Mexfield]
>
> THEN in each case it shall be lawful for [Mexfield] to re-enter upon the premises and peaceably to hold and enjoy the premises

> thenceforth and so that the rights to occupy the premises shall absolutely end and determine as if this Agreement had not been made … .'"

27. Lord Neuberger delivered the leading judgment, with which the other Supreme Court Justices agreed. The Supreme Court found that on the true construction of the agreement Ms Berrisford was intended to enjoy the premises for life. Lord Neuberger referred to the following factors:

    i) At paragraph 44 he said,

    > "I consider that, on a true construction of the agreement, it was intended that Ms Berrisford enjoy the premises for life - subject, of course, to determination pursuant to clauses 5 and 6. I have in mind in particular clause 6(c), which will apply on Ms Berrisford's death, the fact that her interest is unassignable, and the fact that it was intended to ensure that she could stay in her home. "

    ii) At paragraph 67, when considering Ms Berrisford's alternative case in contract, he said,

    > "But the ultimate basis for inferring a tenancy (and its terms) is the same as the basis for inferring any contract (and its terms) between two parties, namely what a reasonable observer, knowing what they have communicated to each other, considers that they are likely to have intended. Given that no question of statutory protection could arise, it seems to me far less likely that the parties would have intended a weekly tenancy determinable at any time on one month's notice than a licence which could only be determined pursuant to clauses 5 and 6."

    iii) Clause 6(c), which would allow the landlord to terminate the tenancy if Ms Berrisford ceased to be a member, including on death (paragraph 44);

    iv) The fact that Ms Berrisford's interest was unassignable (paragraph 94) and

    v) The fact that it was intended to ensure that she could stay in her home (paragraph 100).

28. In *Mexfield* it was confirmed that express leases for life fall within the operation of s.149(6) and do not need the benefit of the common law rule. Further, tenancies for life which can be terminated by notice in circumstances other than the tenant's death also fall under s.149(6). Lord Neuberger said,

    > "50. It is also suggested that section 149(6) does not apply to arrangements such as the agreement which are determinable in circumstances other than the tenant's death – e.g. on the grounds set out in clause 6. I can see no reasons of principle for accepting that contention, and it appears to me that there are strong practical reasons for rejecting it. The common law rule that

> uncertain terms were treated as life tenancies applied, almost by definition, to arrangements which determined in other events, and it is hard, indeed impossible, to see why the rule should be limited to cases where an event automatically determines the term, as opposed to cases where an event entitles the landlord to serve notice to determine the term. In each case, the term is uncertain. At least one of the reasons the common law treated uncertain terms as tenancies for lives was, as I see it, to save arrangements which would otherwise be invalidated for technical reasons, and I find it hard to accept that the modern law requires the court to adopt a less benevolent approach to saving contractual arrangements.
>
> …
>
> 56. … even if the tenancy created by the agreement was a monthly tenancy with an objectionable fetter, it seems to me that it would have been treated as a life estate under the old law (subject to the right to determine in accordance with the terms of the fetter), and so would now be a tenancy for 90 years."

29. *Mexfield* confirms that arrangements with individuals for an uncertain duration which prior to 1926 were treated as tenancies for life at common law, are now converted by s.149(6) into 90-year terms. This includes:

    i) A lease to an individual for an uncertain duration.

    ii) Periodic tenancies with an invalid fetter on the landlord's right to determine them.

30. Lord Dyson said,

> "117. Accordingly, a periodic tenancy determinable on an uncertain event was treated as a defeasible tenancy for life. In disputing this proposition, Mr Gaunt's principal submission was that, before the enactment of the 1925 Act, the question whether a periodic tenancy determinable on an uncertain event was a defeasible tenancy for life was one of construction of the particular agreement. But, as Lord Neuberger explains, it is clear from the authorities that this is incorrect. **It was a rule of the common law that such a tenancy was automatically treated as a tenancy for life. It had nothing to do with the intention of the parties.**
>
> 118. The effect of section 149(6) of the 1925 Act was to convert such a tenancy into a term for 90 years, subject to earlier termination in accordance with its terms. It follows that the Agreement is such a tenancy and all the terms of clause 6 apply with full force and effect. **Mexfield cannot terminate the agreement by serving a notice to quit as if this were a simple monthly tenancy without more**." (my emphasis)

31. In *Mexfield* it was said that the ordinary principles of construction applied to the construction of the occupancy agreement. Lord Clarke said,

> "107 As I see it, the ordinary principles governing the true construction of a contract apply to tenancy agreements and leases. The principles have been discussed in many cases, notably of course, as Lord Neuberger MR said in *Pink Floyd Music Ltd v EMI Records Ltd* [2010] EWCA Civ 1429 at [17], by Lord Hoffmann in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, passim, in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912F-913G and in *Chartbrook Ltd v Bersimmon Homes Ltd* [2009] AC 1101, paras 21-26. I agree with Lord Neuberger MR (also at para 17) that those cases show that the ultimate aim of interpreting a provision in a contract is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. As Lord Hoffmann made clear in the first of the principles he summarised in the *Investors Compensation Scheme* case, at p 912H, the relevant reasonable person is one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract."

32. As to the surrounding circumstances relevant to the interpretation of the Agreement, Lord Neuberger said,

> "15. … Before considering the argument by reference to the terms of the Agreement, it is, of course, necessary to consider whether there is anything in the surrounding circumstances relevant to the interpretation of the Agreement."

Bass Holdings Ltd v Lewis

33. As regards express tenancies for life, the Court of Appeal held in *Bass Holdings Ltd v Lewis* [1986] 2 EGLR 40 that it is only tenancies ending automatically with a death which fall within s.149(6). A periodic tenancy, capable of earlier termination by notice on the tenant's death, did not.

Southward Housing Co-operative Limited v Walker

34. In *Southward Housing Co-operative Limited v Walker* [2015] EWHC 1615, the co-operative granted the defendants a weekly tenancy. The tenancy provided:

    i) By clause 7(1) of the agreement, the claimant agreed to give the defendants at least one month's notice in writing when it wished to terminate the agreement.

    ii) By clause 7(3) of the agreement, the claimant agreed that before commencing proceedings for possession it would end the tenancy by serving a written notice to quit giving at least one calendar month's notice (not having to end on the last

day of a month) and that it would not begin proceedings until the expiration of the notice to quit.

iii) Also by clause 7(3) of the agreement, the claimant agreed that the defendants could only be required to give the claimant possession by order of the County Court and that it would not seek an order for possession except on specified grounds.

iv) The specified grounds include non-payment of rent which is due, and/or persistent delay in the payment of rent lawfully due.

v) The agreement did not include a forfeiture clause.

35. The defendants fell into arrears of rent. The cooperative served a notice to quit and then sought a possession order.

36. It was held that the Agreement fell into the category of a periodic tenancy with an invalid fetter on the landlord's right to determine it.

37. Hildyard J decided that the common law rule (whereby an agreement with an individual for an uncertain term was treated as a tenancy for life) could be disapplied where there was a clear contrary intention in the parties' agreement. Hildyard J found that the judgments of the Supreme Court in *Mexfield* left open the possibility that the common law rule may be disapplied where those intentions and fundamental aspects of their agreement would be confounded by it. He said,

> 84. Lord Neuberger, in rejecting the claimant's argument that an agreement for an uncertain term was only regarded as creating a tenancy for life if, on a fair reading of the agreement, that was what the parties to the agreement intended, said this (at paragraph 44):
>
> 'In my judgment…there are three answers to that contention. The first is that the reasoning in *Zimbler v Abrahams* is not strictly inconsistent with [Counsel for the successful defendant's] analysis: if, as a matter of interpretation, the agreement in that case did involve the grant of a tenancy for life, then there is no need to invoke [Counsel for the defendant's] analysis, but that does not mean that the analysis is wrong. Secondly, if *Zimbler v Abrahams* did proceed on the assumption that an agreement which purported to create a tenancy for an uncertain term could not give rise to a tenancy for life unless it was the parties' intention to do so, it was wrong, as it would have been inconsistent with the authoritative dicta relied on by [Counsel for the defendant], in particular the clear statement in *Littleton*, vol 2, section 382. (I also note that neither counsel in *Zimbler v Abrahams* relied on the point made by [Counsel for the applicant]: see pp 578-580.) Thirdly, even if an agreement which creates an uncertain term could only have resulted in a tenancy for the life of the tenant if that was the intention of the parties, I consider that on a true construction of the agreement, it was

intended that [the defendant] enjoy the premises for life – subject of course to determination pursuant to clauses 5 and 6…'

85. There is no indication in any of the other judgments of any disagreement with any of these three points. Baroness Hale recognised the dangers of an inflexible rule, but nevertheless agreed with Lord Neuberger. Lord Clarke also agreed with Lord Neuberger. Moreover, Lord Dyson, after referring also to *Joshua Williams's Law of Real Property,* 23rd ed (1920), said this (at paragraph 117):

'…a periodic tenancy determinable on an uncertain event was treated as a defeasible tenancy for life. In disputing this proposition, [Counsel for the claimant's] principal submission was that, before the enactment of the 1925 Act, the question whether a periodic tenancy determinable on an uncertain event was a defeasible tenancy for life was one of construction of the particular agreement. But, as Lord Neuberger MR explains, it is clear from the authorities that this is incorrect. It was a rule of the common law that such a tenancy was automatically treated as a tenancy for life. It had nothing to do with the intention of the parties.' [My emphasis]

86. At first blush, these statements, and the Supreme Court's unanimity, suggest that the conundrum is not capable of being resolved by reference to the contrary intention of the parties. I must admit that I was initially persuaded that this was so, however odd and unsatisfactory the result.

87. However, and with diffidence and anxiety, I have eventually concluded that there is a solution which does give effect to the intention of the parties. The solution revolves around the difference between, on the one hand, accepting (as plainly one must) that the 'rule' can be applied in circumstances where the parties had no inkling or intention that it would, and, on the other hand, accepting that its application is mandatory even where the parties' intentions were to the contrary and their agreement contains fundamental terms that simply cannot be carried over into a 90-year lease.

…

90. In the latter context, what I have especially in mind is the fact that, unlike in the *Mexfield* case, the Agreement in this case did contain provisions for each side to give notice to quit, but did not contain any provision for forfeiture. The Defendants have seized on this. They submit that a lease for a term of 90 years cannot be terminated by service of a notice to quit, 'because that would defeat the very nature of the tenancy as having a fixed term of 90 years'. In this they would appear to be correct: but to my mind

> it starkly emphasises how bizarre it would be to adopt the 'rule' in such circumstances.
>
> 91. I have concluded that the 'rule' does not depend for its application on the parties' intentions; but the judgments of the Supreme Court in the *Mexfield* case leave open the possibility that it may be disapplied where those intentions and fundamental aspects of their agreement would be confounded by it."

38. Hildyard J found that the case was distinguishable from *Mexfield* and the agreement was a contractual licence. He said,

> "72. I accept the Claimant's submissions that the terms of the Agreement show a clear contrary intention:
>
> (1) The front page of the tenancy states: 'The tenancy begins on Monday 4th April 2011 and is a weekly tenancy.'
>
> (2) Rent is payable weekly (Clause 1(1)-(2)).
>
> (3) In contrast to the *Mexfield* case, there is no factual background to the grant of the tenancy which suggests that the tenancy was intended to be for life (cf the *Mexfield* case at paragraph 19). The Claimant does not operate a mortgage rescue scheme as Mexfield did.
>
> (4) Most importantly, to my mind, the Agreement is repeatedly expressed as determinable by a 'notice to quit', which is a hallmark of a periodic tenancy (Clause 2[2](b), Clause 4[2], Clause 6[2], Clause 7[3]). The *Mexfield* tenancy had a conventionally-drafted right of re-entry, which is consistent with a fixed term, and no express provision for notice to quit.
>
> ...
>
> 153. ... As it is, of course, the matter is hypothetical: my primary basis of proceeding is that the case is distinguishable from the *Mexfield* case, so that (a) the tenancy is a periodic tenancy which the Claimant had every right to recover at the end of the term, (b) there is no question of the notice to quit being a forfeiture, and (c) accordingly there is no recourse to relief from forfeiture. "

Appeal

39. There are three grounds of appeal (tab 2, 15-17):

i) Ground 1: Status of Appellant's occupation. The District Judge was wrong in holding that the Appellant was a contractual licensee and does not occupy 35a Digby Crescent, London N4 2HS pursuant to a tenancy for life which became a long lease pursuant to s.149(6).

ii) Ground 2: Making of Possession Order following determination of preliminary issue. The District Judge acted unjustly because of a serious procedural irregularity in making orders for possession, for payment for occupation or use and for costs (except in so far as they related to the costs of the preliminary issue) on 23 September 2025.

iii) Ground 3: Lack of evidence. The District Judge was wrong to hold that the court was bound by the findings of HHJ Bloom in Claim Number K04EC512 (being proceedings between Elena Garcia-Alvarez and Tim Sheppard as Claimants and the Appellant as Defendant) ("the Findings") and to hold that the Respondent was entitled to rely upon the Findings as evidence of a breach of the Appellant's contractual licence justifying termination.

40. By an order dated 17 November 2025 (drawn 3 December 2025), I ordered that there be a rolled-up appeal hearing dealing with permission to appeal and, if granted, the appeal.

41. Mr Adams concedes ground 3.

42. CPR 52.6 provides:

> (1) Except where rule 52.3B, rule 52.7 or rule 52.7A applies, permission to appeal may be given only where—
>
> (a) the court considers that the appeal would have a real prospect of success; or
>
> (b) there is some other compelling reason for the appeal to be heard.

43. CPR 52.21 provides:

> (3) The appeal court will allow an appeal where the decision of the lower court was—
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
>
> (4) The appeal court may draw any inference of fact which it considers justified on the evidence.

44. I find that this appeal would have a real prospect of success on all three grounds of appeal and accordingly, I grant permission to appeal on all grounds of appeal pursuant to CPR 52.6.

Ground 1: Status of Appellant's Occupation

45. In the Grounds of Appeal settled by Ms Wicks it is said (tab 2, 15-17),

> "1. District Judge Naidoo was wrong in holding that the Appellant was a contractual licensee and does not occupy 35a Digby Crescent, London N4 2HS ('the Property') pursuant to a tenancy for life which became a long lease pursuant to s.149(6) of the Law of Property Act 1925 ('LPA 1925').
>
> 2. On its true construction, alternatively by operation of law, the Appellant's tenancy agreement dated 18 June 1999 ('the Tenancy Agreement') is a contract for a lease at a rent for life or lives made after commencement of LPA 1925. It takes effect as a contract for a lease (and therefore as an equitable lease under the rule in Walsh v Lonsdale) for a term of 90 years determinable (a) as provided in s.149(6) LPA 1925 and (b) by forfeiture in accordance with clause 2 of that part of the Tenancy Agreement headed 'Ending the Tenancy'."

Ms Wicks' submissions on ground 1

46. Ms Wicks says in her skeleton argument,

> "20. The finding in *Southward* that a common law rule which does not depend on the parties' intention can nevertheless be disapplied by a clear contrary intention is, to say the least, surprising. There are also legitimate criticisms of the interpretation put on the agreement by Hildyard J, and if this matter goes further Ms Hitchens reserves the right to contend that it was wrongly decided. However, for present purposes it is not necessary to go so far, because *Southward* is clearly distinguishable from this case."

47. In her skeleton argument Ms Wicks says,

> "18. Thus, on the facts of the *Mexfield* case itself, an agreement that '*Mexfield would let and Mrs Berrisford would take the premises from 13 December 1993 and thereafter from month to month*', determinable by Mrs Berrisford by giving one month's notice in writing (clause 5) and by Mexfield on certain specified grounds (clause 6) created a 90-year term, terminable after Mrs Berrisford's death in accordance with s.149(6) and, before her death, in accordance with clauses 5 and 6. In reaching the conclusion that, on the true construction of the agreement, Mrs Berrisford was intended to enjoy the premises for life, Lord Neuberger referred to (a) clause 6(c), which would allow the landlord to terminate the tenancy if Mrs Berrisford ceased to be a member, including on death; (b) the fact that her interest was unassignable and (c) the fact that it was intended to ensure that she could stay in her home (*Mexfield*, [44], see also [94], [100])."

48. Ms Wicks submits that on its proper interpretation the Agreement is an express agreement for the Appellant's life and the life of any successor. By s.149(6), the

Appellant's lease for life is a tenancy for 90 years, subject to earlier determination in accordance with clauses 1 and 2 of the Agreement. This case does not depend on the common law rule applicable to uncertain terms.

49. Ms Wicks submits that on a proper interpretation, if the Court were to find that the Agreement was a periodic tenancy with an invalid fetter on the landlord's right to determine it, the effect of s.149(6) of the 1925 Act would be to convert such a tenancy into a term for 90 years, subject to earlier termination in accordance with its terms.

50. Ms Wicks submits that the present case is analogous to the agreement in *Mexfield*, although she says clause 4 of the Agreement, which provides, "The tenancy ends on the death of the tenant except in cases where the tenancy succeeds to a successor as defined below", is a much stronger pointer to a life tenancy than was clause 6(c) in *Mexfield*, which provided that the agreement may be brought to an end if Ms Berrisford shall cease to be a member of Mexfield.

51. Ms Wicks says the Agreement is not analogous to *Southward*, which is expressly stated to be a *weekly tenancy* and which, consistently with a periodic tenancy, was stated to be terminable by notice to quit. Importantly, in the present case there is no reference anywhere in the Agreement to the tenancy continuing from week to week, month to month, quarter to quarter or for any other period. Ms Wicks submits in her skeleton argument,

> "21. Unlike the agreement in *Southward*, the Agreement does not purport to create a periodic tenancy at all. On the first page, it states that the tenancy '*begins on 18 June 1999*'."

52. Clause 2 of the section "ENDING THE TENANCY" in the Agreement provides (tab 9, 58),

> "The co-op may bring the tenancy to an end by giving the tenant 4 weeks notice in the statutorily prescribed form i.e. by issue of a Notice to Quit.
>
> The co-op will only issue a Notice to Quit in one or more of the following circumstances: a) … n) …"

53. Ms Wicks submits that *Southward* is not only distinguishable but it has been overtaken by Supreme Court decisions. She submits that although clause 2 is not drafted in the traditional language of a forfeiture clause, whether a clause is a forfeiture clause is a matter of substance, not form. She argues that a clause which permits the landlord to end the tenancy earlier than it would naturally terminate and which is only exercisable in the event of a default by the tenant, is a forfeiture clause. Ms Wicks referred the Court to the Supreme Court decision in *Croydon LBC v Kalonga* [2022] UKSC 7, [2023] AC 1 (*Kalonga*), in which Lord Briggs said,

> "50. Whether a particular clause is or is not a forfeiture clause is a question of substance, not form. …
>
> 51. It is not open to the drafter to avoid the consequences of a provision being in substance a forfeiture (and thereby attracting

> the jurisdiction to grant relief) by dressing it up as something else in form.
>
> ...
>
> 58. In my judgment all the repeated provisions in Ms Kalonga's tenancy agreement by which Croydon could bring her fixed term tenancy to an early end by reason of conduct by her amounting to default are forfeiture provisions. They fall squarely within the forfeiture test in the Clays Lane case as a matter of substance, and she had a right under the general law to seek relief from forfeiture in respect of those defaults, a right of which the secure tenancy regime did not deprive her.
>
> 59. For completeness I should say that those grounds in her tenancy agreement by which Croydon could bring her fixed term to an early end otherwise than because of any default on her part are not forfeiture provisions. ... Because of their inclusion in her tenancy terms they operate as a rather complicated break clause."

54. Ms Wicks submits that a forfeiture clause points to the Agreement being a lease for life rather than a contractual licence.

55. Ms Wicks submits that unlike the agreement in *Southward*, the Agreement does not purport to create a periodic tenancy at all. On the first page, it states that the tenancy "begins on 18 June 1999". By clause 4 under the heading "Ending the Tenancy", the tenancy "ends on the death of the tenant except in cases where the tenancy succeeds to a successor as defined below". She says that clause 4 is a very important pointer to the Agreement being a long lease.

56. "Successor" is then defined (essentially, the tenant's spouse or partner living with them at the date of the tenant's death). As there can only be one succession, the tenancy must terminate on the death of any successor.

57. Clause 1 of the Agreement in the section "<u>ENDING THE TENANCY</u>" provides (tab 16, 170), "the tenant has the right to end the tenancy". Ms Wicks submits that by clause 1, the tenant has the right to end the tenancy at any time, by giving four weeks' notice in writing. She argues that it should be noted that this right of termination is not the same as the common law right of a periodic tenant to give notice to quit: where the period of the tenancy is less than yearly, the rule is that the length of notice must correspond to a period of the tenancy: a weekly tenancy is determined by a week's notice, a monthly tenancy by a month's notice and a quarterly tenancy by a quarter's notice (Woodfall, Landlord and Tenant, paragraph 17.208). In each case the notice to quit must expire at the end of the current period of the first day of the next (Woodfall, paragraph 17.209). In the present case, the tenant's right to end the tenancy is by giving four weeks' notice whereas the rent is paid weekly. Thus, the notice which may be given under clause 1 is correctly not referred to as notice to quit.

58. By clause 2, the landlord may bring the tenancy to an end by giving "4 weeks notice in the statutorily prescribed form i.e. by issue of a Notice to Quit", but only in certain defined circumstances. Ms Wicks makes three points.

59. Firstly, she submits that clause 2 is in substance a forfeiture clause and not a Notice to Quit. She refers to *Kalonga,* in which Lord Briggs said,

> "Megaw LJ's dictum in *Clarke v Widnall* was applied (although with a different outcome on the facts) in the *Clays Lane* case (*supra*). At p 193 Fox LJ said:"
>
> 'We accept, for present purposes, the submission on behalf of the co-operative that a right to determine a lease by a landlord is a right of forfeiture if (a) when exercised, it operates to bring the lease to an end earlier than it would 'naturally' terminate; and (b) it is exerciseable in the event of some default by the tenant.'
>
> That is in my view a good working definition of what, in substance, constitutes a provision for forfeiture in a tenancy agreement, both under the general law and under sections 82 and 86 of the 1985 Act, and the equivalent provisions of the 1980 Act."

60. Secondly, Ms Wicks submits that the reference to a "Notice to Quit" here is legal gobbledegook for the following reasons:

    i) A notice to quit has no relevance to a tenancy which is not a periodic tenancy.

    ii) There is no such thing as a "statutorily prescribed form" for a notice to quit, which is a common law concept.

    iii) As is said in Godfrey and Davis, *Claims to the Possession of Land*,

    > "B1.10 The requirements of s 5 are additional - they do not dispense with the common law rules (a) that the notice must be expressed to expire on the first or last day of a period and (b) that the proper common law length of notice must be given."

61. Ms Wicks submits that the words used in clause 2 of the Agreement, in their proper context, just mean "four weeks' notice in writing".

62. Ms Wicks further submits that a break clause is caught by s.5 of the Protection from Eviction Act 1977. She refers to *Claims to the Possession of Land*, above at B1.10, which provides, "A break clause notice would appear to be caught by [s.5 Protection from Eviction Act 1977]".

63. Ms Wicks referred the Court to *Hounslow London Borough Council v Pilling* [1993] 1 WLR 1242, in which the Court of Appeal found that the clause relied upon by the tenant to determine the tenancy was not referring to a Notice to Quit but a break clause in the tenancy agreement and the notice had to comply with s.5(1) of the Protection from Eviction Act 1977.

64. Ms Wicks referred the Court to paragraph 44 of *Mexfield*, at which Lord Neuberger said that the fact that Ms Berrisford's interest was unassignable was a factor in finding that on a true construction of the agreement it was intended that Ms Berrisford should enjoy a life interest in the premises. Ms Wicks observed that in the present case, the Appellant's ability to assign the lease was very limited, namely "not to assign the tenancy except in furtherance of a court order made under section 24 of the Matrimonial Causes Act 1973" (tab 9, 56).

65. Moreover, Ms Wicks contends that the context in which the Agreement was made gives support to its interpretation as a long-term arrangement. Ms Wicks submits that mutual housing co-operatives are likely to wish to confer long-term settled status on their members, qua tenants, not least because they do not benefit from statutory security of tenure. Hildyard J in *Southward* distinguished *Mexfield* on the basis that the landlord there had been created pursuant to a mortgage rescue scheme, but overlooked this aspect of the relevant factual background.

66. Ms Wicks referred the Court to the validity principle. In *Egon Zehnder Ltd v Tillman* [2019] UKSC 32 Lord Wilson JSC said,

> "38. … the validity principle proceeds on the premise that the parties to a contract or other instrument will have intended it to be valid. It therefore provides that, in circumstances in which a clause in their contract is (at this stage to use a word intended only in a general sense) capable of having two meanings, one which would result in its being void and the other which would result in its being valid, the latter should be preferred. In the present appeal, however, the parties are at odds about the specific circumstances in which the principle is engaged. Is it engaged only when the two meanings are equally plausible or is it also engaged even when the meaning which would result in validity is to some extent less plausible?
>
> …
>
> 40. To say that rival meanings are evenly balanced is to say that they are equally plausible. Thus, in The Interpretation of Contracts, 6th ed, 2015, Sir Kim Lewison offers the following proposition at the head of chapter 7, section 16:
>
> 'Where two interpretations of an instrument are *equally plausible*, upon one of which the instrument is valid, and upon the other of which it is invalid, the court should lean towards that interpretation which validates the instrument." (italics supplied)'
>
> …
>
> 42. … In *Great Estates Group Ltd v Digby* [2011] EWCA Civ 1120, [2012] 2 All ER (Comm) 361, Toulson LJ explained that, if the contract was "capable" of being read in two ways, the meaning which would result in validity might be upheld "even if it is the less natural construction". And in *Tindall Cobham 1 Ltd*

> *v Adda Hotels* [2014] EWCA Civ 1215, [2015] 1 P & CR 5, Patten LJ, with whom the other members of the court agreed, observed at para 32 that the search was for a "realistic" alternative construction which might engage the principle. In my view Megarry J, Toulson LJ and Patten LJ were identifying the point at which the principle is engaged in much the same place. Let us work with Patten LJ's adjective: let us require the alternative construction to be realistic."

67. Ms Wicks submits that applying this principle to the case, Mr Adams seeks to interpret the Agreement as an attempt to create a weekly periodic tenancy because clause 2 refers three times to notice to quit. Ms Wicks submits that Mr Adams' argument requires one to adopt a construction which immediately renders that provision void. If one treats the Agreement as creating a weekly periodic tenancy, and one also treats the reference to a notice to quit as having been fettered, one immediately creates a situation where the very clause which refers to notice to quit defeats the intention of the parties and means that there is no weekly periodic tenancy. Ms Wicks said she relied upon the validity principle in support of her interpretation of the Agreement to be a lease for life.

68. Regarding the District Judge's reasoning, Ms Wicks submits,

> "30. The District Judge's reasoning is set out in paragraphs [6] - [24] of her judgment. It is respectfully submitted:
>
> (1) that she overlooked the key difference between the Agreement and that considered in *Southward*, namely the absence of any reference to a periodic tenancy;
>
> (2) that she treated the Agreement as being terminable by notice to quit, whereas the notices which may be served under clauses 1 and 2 are not, properly, notices to quit;
>
> (3) that she wrongly treated the Agreement as containing no forfeiture clause; and
>
> (4) that she failed to recognise the importance of clause 4 under 'Ending the Tenancy' and that, in light of the reasoning in *Mexfield*, it was no answer to the interpretation relied on by Ms Hitchens that the tenancy was terminable under clauses 1 and 2 in advance of death."

69. In her skeleton argument, Ms Wicks states that the Claimant's case was that the Claimant's occupation status was that she had a contract for a 90-year lease, pursuant to s.149(6). Ms Wicks says in her skeleton argument,

> "28. It is accepted that a legal lease for a term of more than three years must be created by deed: ss.52, 54 LPA 1925. However, an agreement which satisfies s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 (as the Agreement does) takes effect as a contract to grant such a lease and s.149(6)

> expressly recognises contracts for leases for lives as falling within its provisions."

70. In her oral submissions, Ms Wicks referred the Court to the judgment of Lord Neuberger in *Mexfield*, where he said that if a tenant was granted a tenancy for life, pursuant to s.149(6) this life tenancy would be converted into a 90-year lease. Lord Neuberger said,

> "48. The first argument which might be raised against this contention is that the Agreement was not a 'lease … for life', merely a contract which would have been treated by established case law as such a lease. I do not consider that can be right. Apart from not being consistent with the wording of section 149(6), it would mean that an agreement such as that described in Littleton section 382, which existed as a continuing valid determinable life estate on the 1 January 1926, would have lost its status as a legal estate, as it would not have been saved by section 149(6): that cannot have been the legislature's intention."

71. Lord Neuberger's analysis was agreed by Lord Walker at paragraph 85, where he says, "I agree with … what Lord Neuberger goes on to say in para 48."

72. However, Ms Wicks recognised that she had not referred to this submission before and accepted that for the purpose of this application, the Appellant's case was that she had been granted a contract for a 90-year lease by virtue of s.149(6).

73. Ms Wicks concludes that,

> "26. Consequently, on the proper interpretation of the tenancy agreement in line with ordinary principles of construction, what the parties intended was that Ms Hitchens should have a tenancy for her life and the life of any successor, determinable prior to her or their death in accordance with clauses 1 and 2. That is an express agreement for a lease for 'life or lives' within the meaning of s.149(6): it does not depend on the common law rule applicable to uncertain terms. It is analogous to the agreement in Mexfield, although clause 4 of the Agreement under 'Ending the Tenancy' is a much stronger pointer to a life tenancy than was clause 6(c) of the *Mexfield* agreement. The Agreement is not analogous to *Southward*, which was expressly stated to be a weekly tenancy and which, consistently with a periodic tenancy, was stated to be terminable by notice to quit: Southward [72]."

<u>Mr Adams' submissions on ground 1</u>

74. Mr Adams said in his oral submissions that the parties intended to create a weekly periodic tenancy, however they failed to do so because the landlord's right to serve a notice to quit was fettered and so the Agreement was of uncertain duration. Therefore, as a periodic tenancy with an invalid fetter on the landlord's right to determine, the Agreement could, applying *Southward*, be disapplied because it is submitted that there was a clear contrary intention to create a contractual licence.

75. Mr Adams adopted a three-fold structure in his submissions. Firstly, he submitted that he would look at the context in which the case arises. Secondly, he would put forward the Respondent's analysis. Thirdly, he would consider the Appellant's attempts to distinguish the case from *Southward.*

76. Regarding context, he said the question whether the Agreement creates a tenancy or a licence was only relevant in the context of possession proceedings. He submitted that the landlord followed the procedure in the Agreement and served a notice to quit. He said that the landlord also served a s.146 notice and so whether the Agreement was a licence or a lease, they followed the procedure.

77. Mr Adams submitted that in *Mexfield*, the landlord sought to avoid the restrictions in the agreement by serving a notice to quit on the tenant and saying that this was sufficient. In *Southward*, the landlord served a notice to quit and then possession proceedings for rent arrears. There was no alternative forfeiture claim. He said that in this case the landlord's approach was different: the landlord said if the Agreement is a licence, we have served a notice to quit and if it is a long lease, we have served a s.146 notice and issued possession proceedings.

78. He referred to the Defence, which was drafted by the Appellant in person.

79. He submitted that it was unclear what the consequences would be of the Agreement being a long lease as opposed to a contract. He submitted that although the Court did not have to resolve the question of what the consequences would be of finding that the Agreement was a long lease, this was relevant because it impacted on the way in which the tenancy could be determined.

80. Secondly, Mr Adams submitted that regarding the termination provisions, the contract must be construed as a whole in the context that was known to the parties at the time of the Agreement, and as the parties understood it at the time. He said the Appellant adopted a two-stage approach, which was wrong. He said the first stage looked at the Agreement but ignored the termination provisions with reference to notice to quit. He said the Appellant invited the Court to find the Agreement was a tenancy for life, only by looking at other provisions of the agreement. He said that in the second stage, the Appellant looked at the termination provisions on the basis of the conclusions that have already been reached, that the Agreement gives rise to a tenancy for life. In order to find that the Agreement is a tenancy for life, one needs to ignore the termination provisions at that stage. He submitted that as in *Southward*, what was intended was not to create a tenancy for life.

81. Mr Adams submitted that regarding the context, whilst the tenants as members of the Co-operative may wish for longevity in their occupation of their premises, they would not expect to have a high degree of security.

82. Mr Adams referred to the four factors referred to by Hildyard J at paragraph 72 of *Southward* (see paragraph 38 above), and made the following submissions:

    i) The fact that the Agreement does not contain an equivalent expression to "a weekly tenancy" was not the decisive factor in *Southward.*

    ii) As in *Southward*, the Agreement provides for a weekly rent.

iii) The District Judge rightly held in her judgment at paragraph 14 (tab 4, 22) that there was no material difference between Southward Housing Cooperative Limited and the Respondent in the present case.

iv) Mr Adams submits at paragraph 11 of his skeleton argument,

> "Of the four factors the most important was the fourth – the repeated expressions that the agreement was terminable by a notice to quit."

Mr Adams says at paragraphs 17.1 to 17.3 of his skeleton argument,

> "First, Ms Hitchens submits (¶ 22) that her right to terminate pursuant to Clause 1 [53] by four weeks' notice in writing is not the same as a common law notice to quit. Whilst Ms Hitchens is correct that at common law a weekly periodic tenant should give a week's notice to quit, the common law rule may be excluded by express agreement, local custom or statutory provision (see Woodfall: Landlord and Tenant at ¶ 17.208; *Mexfield* at ¶ 16). In this case, the Agreement reflects the statutory requirement contained in s. 5(1) of the Protection from Eviction Act 1977 ('the PEA 1977'): a tenant's notice to quit premises let as a dwelling must be at least 4 weeks. Viewed in this legislative context, the period specified in the Agreement adds further support to the conclusion that the parties intended to create a weekly periodic tenancy terminable by notice to quit.
>
> Secondly, … in the case of residential property, s. 5(1)(a) of the PEA 1977 provides that a notice to quit shall be invalid unless it 'is in writing and contains such information as may be prescribed'. Since 1988, the information required has been prescribed by The Notices to Quit etc. (Prescribed Information) Regulations 1988. The reference to '*a statutorily prescribed form*' therefore further supports the conclusion that the parties intended to create a weekly periodic tenancy terminable by notice to quit.
>
> Thirdly, Ms Hitchens submits (¶ 23) that *'a notice to quit has no relevance to a tenancy which is not a periodic tenancy'*. This however puts the cart before the horse. The Judge's task was to 'determine what the parties meant by the language *used'* (*Mexfield* at ¶¶ 17 and 107). In this case as in *Southward*, *'the Agreement is* repeatedly expressed as determinable by a notice to quit, which is a hallmark of a periodic tenancy' (*Southward* at ¶ 72). The words 'notice to quit' are a strong indicator of an intention to create a periodic tenancy terminable by notice to quit rather than a long lease subject to forfeiture."

83. In his oral submissions, Mr Adams emphasised that the most important of the four features identified by Hildyard J was the termination provisions, and the District Judge also found that to be the most important feature in the present case. He said that the key

feature in *Southward* was that the agreement included a notice to quit provision and no forfeiture clause. Mr Adams said that was the same in the present case. He submitted that the reference in clause 2 of the Agreement to the "statutorily prescribed form i.e. by issue of a Notice to Quit" fortifies the conclusion that the parties intended that the Agreement should be terminable by notice to quit. He submitted that the reference in clause 2 to notice to quit and to the statute, which he said must be a reference to the Protection from Eviction Act 1977, were strong indicators of the parties intending the Agreement to be terminable by a notice to quit. He said that if the parties intended to create a forfeiture clause, references to a statutorily prescribed form were entirely out of place.

84. Mr Adams says in his skeleton argument,

> "21. If the Agreement created a contractual licence, the termination procedure is relatively straightforward:
>
> 21.1. one or more of the conditions in Clauses 2(a) to (e) [53 – 54] must apply;
>
> 21.2. Quadrant may then serve a 4-week notice to quit [53 ¶ 2] (as required in any event by s. 5 of the PEA 1977); and
>
> 21.3. Quadrant must then obtain a possession order (as required in any event by s. 3 of the PEA 1977).
>
> ...
>
> 24. If Ms Hitchens is correct that the Agreement gives rise to an equitable 90-year lease and the right of Quadrant to terminate the Agreement takes effect as a forfeiture clause, the termination provisions would take on a radically different character. The effect would be to foist on the parties a new bargain which neither of them ever intended to enter into (*Southward* at ¶ 93)."

85. Mr Adams said that regarding the validity principle, neither of the two options of a contractual licence or a tenancy for life or lives result in something invalid. He said the licence analysis did not result in the parties' intentions being modified. He said that if a licence has been created, the termination provision of clause 2 can take effect. He said in this case the choice was between two different forms of validity: validity as a type of licence or validity as a type of tenancy. He said that if it is found that the Agreement is a licence, that is close to the parties' expressed intentions than if it is found to be a tenancy for life, converted into a 90-year lease.

86. Mr Adams submitted that the benefit of the Respondent's interpretation was that it led to a more straightforward trial for the claim where it was simply necessary to determine whether the conduct occurred or not. If one concluded it was a 90-year lease, it may be necessary for the Court to consider at a later date the questions about whether it was a long lease, whether a determination of breach was necessary and whether s.168 of the Commonhold and Leasehold Reform Act 2002 applied. Waiver and relief from forfeiture could be argued.

Finding as to ground 1

87. It is clear law that the ordinary principles of construction govern the Agreement's true construction. The Court must consider the Agreement and the surrounding circumstances relevant to the interpretation of the Agreement holistically to determine the intention of the parties as to the agreement they have created.

88. I reject Mr Adams' submission that the parties intended to create a weekly periodic tenancy and failed to do so because the landlord's right to terminate is fettered.

89. I find that the fact that the Agreement provides that the tenancy has a fixed start date, namely 18 June 1999, and a fixed end date, namely the death of the tenant except in cases where the tenancy succeeds to a successor, points very strongly towards the Agreement being a tenancy for life or lives and not a contractual licence.

90. I find that the fact that the tenancy can endure for a successor on the death of the tenant is a pointer that the parties intended the agreement to be of a long term nature.

91. I find that *Southward* is distinguishable because there was no clause in *Southward* that the agreement ended on the death of the tenant or a successor.

92. I find that the District Judge erred in law when she said in her judgment at paragraph 10 (tab 6, 35), "The fact that the agreement says it ends with the tenant's death or succession is not relevant as it does not specify that this is the only way in which the tenancy can end". I find that clause 4 of the Agreement is highly relevant to ascertaining the parties' intention, namely that the Agreement was for a tenancy for life or lives. It was no answer to clause 4 to say that the tenant's death or succession is not the only way in which the tenancy can end. This argument was expressly considered and rejected by the Supreme Court in *Mexfield.* Lord Neuberger, whose judgment was agreed by all the Law Lords, said in *Mexfield*,

> "50. It is also suggested that section 149(6) does not apply to arrangements such as the Agreement which are determinable in circumstances other than the tenant's death – e.g. on the grounds set out in clause 6. I can see no reasons of principle for accepting that contention, and it appears to me that there are strong practical reasons for rejecting it. ... At least one of the reasons the common law treated uncertain terms as tenancies for lives was, as I see it, to save arrangements which would otherwise be invalidated for technical reasons, and I find it hard to accept that the modern law requires the court to adopt a less benevolent approach to saving contractual arrangements."

93. I find that unlike in *Southward*, the Agreement did not purport to create a periodic tenancy.

94. I find that the fact that the Appellant's ability to assign the lease is very limited, namely in furtherance of a court order made under section 24 of the Matrimonial Causes Act 1973" (tab 9, 56) points to the Agreement being a tenancy for life or lives. I bear in mind that Lord Neuberger said in *Mexfield* at paragraph 44 that the fact that Ms Berrisford's interest was unassignable was a factor in finding that on a true construction

of the agreement it was intended that Ms Berrisford should enjoy a life interest in the premises.

95. The fact that the Agreement provides under the heading "the tenant's rights" that the tenant may take in lodgers or sublet part of the dwelling (tab 9, 57) is indicative of the Agreement being a long-term arrangement.

96. The fact that the Agreement provides under paragraph 3 of the tenant's rights that the tenant may make improvements, alterations and additions to the premises points to the Agreement being a long-term arrangement.

97. The fact that the Agreement provides under paragraph 3 of the tenant's rights that the tenant can make improvements, alterations and additions to the external or internal communal areas points to the Agreement being a long-term arrangement and not a precarious contractual licence.

98. The Agreement provides under paragraph 5 of the tenant's rights that the tenant has the right to exchange this tenancy with that of another tenant who must either be a secure tenant, an assured tenant, or a tenant of a fully mutual co-op with a similar right to exchange as provided for by the agreement. This again is far more consistent with the arrangement being a long-term tenancy agreement than a precarious licence which can be terminated on a four-week notice to quit.

99. Turning to the factors that Hildyard J identified at paragraph 22 of his judgment for saying that *Southward* was distinguishable from *Mexfield*, I would make the following observations.

100. The first factor that Hildyard J identifies at paragraph 72 of his judgment (see paragraph 38 above) is that the front page of the tenancy states "the tenancy begins on Monday 4th April 2011 and is a **weekly tenancy**" (my emphasis). In the present case, the Agreement does not purport to create a periodic tenancy at all. Nowhere in the Agreement is there reference to the tenancy continuing from week to week, month to month, quarter to quarter or for any other period. Again, I find that the present case is significantly distinguishable from *Southward* on the grounds that the Agreement does not purport to create a periodic tenancy. I find that the District Judge erred in law in overlooking the key difference between the Agreement and that considered in *Southward,* namely the fact that the Agreement did not purport to create a periodic tenancy.

101. The second factor that Hildyard J identifies at paragraph 72 of his judgment is that the rent was payable weekly. I find that this is a neutral factor because the rent must be paid at some interval. In both *Mexfield* and *Southward*, the rent was paid weekly.

102. The third factor identified by Hildyard J at paragraph 72 of his judgment is the factual background and in particular, the fact that Southward Housing Cooperative did not operate a mortgage rescue scheme as Mexfield did.

103. In his skeleton argument, Mr Adams says at paragraph 16, "The [District] Judge rightly held that there was no material difference in the circumstances of the parties in the present case [compared with the parties in *Southward*]".

104. I accept Ms Wicks' submission that:

   i) In *Southward*, Hildyard J never looked beyond the fact that the landlord had not been created pursuant to a mortgage rescue scheme.

   ii) Mutual housing cooperatives are likely to wish to confer long term status on their members *qua* tenants, not least because they do not benefit from statutory security of tenure. I find that Ms Wicks' submission is supported by Lord Neuberger, who said in *Mexfield*,

> "67. But the ultimate basis for inferring a tenancy (and its terms) is the same as the basis for inferring any contract (and its terms) between two parties, namely what a reasonable observer, knowing what they have communicated to each other, considers that they are likely to have intended. Given that no question of statutory protection could arise, it seems to me far less likely that the parties would have intended a weekly tenancy determinable at any time on one month's notice than a licence which could only be determined pursuant to clauses 5 and 6."

105. I find that the District Judge failed to consider adequately the surrounding circumstances relevant to the interpretation of the Agreement. I reject Mr Adams' submission that although the tenants of the Respondent cooperative might wish to remain in occupation of their property for a long period of time, it would not necessarily follow that they would do so on the basis of a high degree of security in their occupation. I find that the members of a mutual housing cooperative would expect to have a high level of security of tenure qua tenants, not least because they do not benefit from statutory security of tenure.

106. The fourth factor identified by Hildyard J in *Southward*, at paragraph 72 of his judgment, was that the agreement was determinable by a notice to quit, which is a hallmark of a periodic tenancy. Mr Adams placed great weight on this factor, which he emphasized was the decisive factor in *Southward*.

107. Clause 1 of the Agreement provides that (tab 9, 58),

> "The tenant has the right to end the tenancy at any time, by giving 4 weeks notice in writing."

108. Mr Adams submits that clause 1 is a notice to quit.

109. I accept Ms Wicks' submission that a notice to quit is a common law concept and that a notice to quit must be expressed to expire on the first or last day of a period and the proper common law length of notice must be given. However, in the present case clause 1 provides that the tenant has the right to end the tenancy at any time by giving four weeks' notice. This is not the proper common law length of notice, which in this case would be one week.

110. Whilst it is true that the common law rule may be excluded by express agreement, local custom or statutory provision, I would make three points.

111. Firstly, there is no such exclusion in the present case.

112. Secondly, the requirements of s.5 of the Protection from Eviction Act 1977 do not dispense with the common law rules. Ms Wicks referred the Court to what is said in Godfrey and Davis, *Claims to the Possession of Land* (see paragraph 60 iii) above.

113. Thirdly, I find that it is at least arguable that a break clause is caught by s.5 of the Protection from Eviction Act 1977 for the reasons set out at paragraphs 62 and 63 above.

114. I conclude that clause 1 is not a notice to quit clause. It is a break clause. There was a clause in similar terms in *Mexfield*. It can be seen from Lord Neuberger's judgment at paragraph 5 that the agreement in *Mexfield* contained the following clause,

> "5. This Agreement shall be determinable by [Ms Berrisford] giving [Mexfield] one month's notice in writing."

115. Turning next to clause 2 of the Agreement and the Respondent's right to bring the tenancy to an end, the Agreement provides (tab 9, 58),

> "The co-op may bring the tenancy to an end by giving the tenant 4 weeks notice in the statutorily prescribed form i.e. by issue of a Notice to Quit.
>
> The co-op will only issue a Notice to Quit in one or more of the following circumstances: a) ... n) ..."

116. Applying the ordinary principles of construction, I make the following findings:

i) As Lord Briggs said in *Kalonga* at paragraph 50, "Whether a particular clause is or is not a forfeiture clause is a question of substance, not form". The provisions of clause 2 of the Agreement are not expressed in the traditional language of a forfeiture clause. However, I find that in substance, clause 2 of the Agreement is a forfeiture clause because all the circumstances in which the Respondent can bring the tenancy to an end (clause 2 a), c) – l) and n)) involve default on the part of the tenant.

ii) I find that clause 2 satisfies the definition of forfeiture provided by Megaw LJ in *Clarke v Widnall* (supra) as it operates to bring the lease to an end earlier than it would 'naturally' terminate and it is exercisable in the event of some default by the Appellant. This is in contrast to *Southward*, where Hildyard J said at paragraph 153, "There is no question of the notice to quit being a forfeiture".

iii) Clause 2 refers to "the statutorily prescribed form i.e. by issue of a Notice to Quit". However, there is no statutorily prescribed form for a forfeiture clause.

iv) I find that the reference to "the statutorily prescribed form i.e. by issue of a Notice to Quit" is, as Ms Wicks submits, legal gobbledegook and it cannot avoid the consequences of clause 2 being in substance a forfeiture clause. As Lord Briggs said in *Kalonga* at paragraph 51,

> "It is not open to the drafter to avoid the consequences of a provision being in substance a forfeiture (and thereby attracting the jurisdiction to grant relief) by dressing it up as something else in form."

117. For the aforementioned reasons, I conclude that:

    i) Clause 2 is in substance a forfeiture clause and not a notice to quit.

    ii) The District Judge erred in law in finding at paragraph 10 of her judgment that the Agreement did not contain a forfeiture clause.

118. Having found that the Agreement provides for a tenancy for life and the life of any successor, the common law rule does not apply and no issue can be raised as to a contrary intention. This was acknowledged in *Southward*. Hildyard J said,

> "69. In the *Mexfield* case, all the justices of the Supreme Court were agreed that in the particular circumstances of that case it was intended that the defendant should enjoy the premises for life; that, to put that into more legal language, the parties did in fact intend a lease for life determinable earlier by the tenant on one month's notice and by the landlord on the happening of certain specified events.
>
> 70. That meant that they did not have to consider the conundrum that arises if that is not the intention of the parties, and where, accordingly, the inexorable application of a rule that transmogrifies into a 90 year term an agreement that is incapable of constituting a tenancy (which is what Lord Neuberger acknowledged was the 'Carrolian' consequence (see paragraph 34)), defeats the intention of the parties."

119. I conclude that applying the ordinary principles of construction holistically, the parties intended that the Appellant should have a tenancy for her life and the life of any successor determinable prior to her or their death, in accordance with clauses 1 and 2 of the Agreement. That is an express agreement for a lease for "life or lives". Such an agreement is converted by s.149(6) to an agreement for a lease for 90 years.

120. I have found it unnecessary to rely upon the validity principle in order to reach a decision as to the interpretation of the parties' Agreement.

121. For completeness I would add that if I had not found that the parties intended to create an express agreement for a lease for life or lives, I would have found that the parties created a periodic tenancy with a fetter on the landlord's right to determine the tenancy.

122. I would then have found, for the same reasons as I found an express tenancy for life was created, that such an agreement would be converted into an agreement for a lease for 90 years by s.149(6) because there was no clear contrary intention in the Agreement.

123. Counsel agreed that whether the lease for 90 years is a legal lease or a lease in equity is for another day.

Summary of findings as to ground 1

124. I find that applying the ordinary principles of construction, what the parties intended was that the Appellant should have a tenancy for her life or the life of her successor, determinable prior to her or her successor's death in accordance with clauses 1 and 2 for the following reasons.

i) The tenancy had a start date, 18 June 1999, and an end date, namely the death of the tenant except in cases where the tenancy succeeds to a successor.

ii) In *Southward* the tenancy did not say that the agreement ended on the death of the tenant or their successor.

iii) I find that the fact that the tenancy can endure for a successor on the death of the tenant is a pointer that the parties intended the agreement to be of a long-term nature.

iv) In contrast to *Southward* the Agreement did not purport to create a periodic tenancy. In *Southward* the tenant had a "weekly tenancy". However, in the present case there is no reference in the Agreement to the tenancy continuing from week to week, month to month, quarter to quarter or for any other period. In the present case the tenancy had a start date and an end date. The District Judge overlooked this important factor.

v) The Appellant's ability to assign the lease was very limited. The District Judge overlooked this factor.

vi) The Agreement provides under the heading "the tenant's rights" that the tenant may take in lodgers or sublet part of the dwelling (tab 9, 57), which I find is indicative of the Agreement being a long-term arrangement.

vii) The Agreement provides under paragraph 3 of the tenant's rights that the tenant may make improvements, alterations and additions to the premises, which points to the Agreement being a long-term arrangement.

viii) The fact that the Agreement provides under paragraph 3 of the tenant's rights that the tenant can make improvements, alterations and additions to the external or internal communal areas which again points to the Agreement being a long-term arrangement and not a precarious contractual licence.

ix) The fact that the Agreement provides under paragraph 5 of the tenant's rights that the tenant has the right to exchange this tenancy with that of another tenant who must either be a secure tenant, an assured tenant, or a tenant of a fully mutual co-op with a similar right to exchange as provided for by the agreement is far more consistent with the Agreement being a long-term tenancy than a precarious licence which can be terminated on a four-week notice to quit.

x) I find that as in *Mexfield*, the mutual housing cooperatives are likely to wish to confer long-term status on their members qua tenants, not least because they do not benefit from statutory security of tenure. The District Judge overlooked this factor.

xi) I find that in substance, clause 1 of the Agreement is a break clause and not a notice to quit clause.

xii) I find that in substance, clause 2 of the Agreement is a forfeiture clause and not a notice to quit clause. The District Judge was wrong to find that the Agreement did not contain a forfeiture clause.

125. I set aside the order of the District Judge pursuant to CPR 52.20(2)(a) and substitute a declaration that the Appellant has a contract for a 90-year lease pursuant to s.149(6).

Ground 2: Making of Possession Order following Determination of Preliminary Issue

126. The order of Deputy District Judge Blake, dated 28 May 2025 (drawn 14 July 2025) provides (tab 11, 87-88 at 88),

> "5. Hearing adjourned to be listed for a 2 hour preliminary hearing on the first open date after 23 July 2025 for the Court to determine the legal status of the Defendant's occupation of the Property and further allocation and directions thereafter.
>
> 6. Defendant is to file and serve any witness statement on which she wishes to rely which is to solely limited to the legal status of her occupation of the Property by 4pm on 9 July 2025."

127. The Respondent's solicitors sent a letter to the Appellant, dated 18 July 2025 (tab 13, 151-153 at 152), in which they said,

> "At this hearing [on 23 September 2025], the judge will consider the relevant documents and determine the legal status of your occupation of the Property. Once this has been decided, the judge will then allocate the case to a track and order directions going forwards."

128. At the hearing on 23 September 2025, contrary to the order of Deputy District Judge Blake, dated 28 May 2025, the District Judge did not allocate the claim to a track and give directions but:

i) Made a 28-day possession order

ii) Dismissed the Appellant's applications for:

a) Specific disclosure, dated 21 August 2025

b) The striking out of the claim, dated 8 September 2025.

<u>Ms Wicks' submissions on ground 2</u>

129. At the hand down of judgment on 23 September 2025, Counsel for the Respondent submitted that the Court should make a possession order.

130. In the Grounds of Appeal it is said (tab 2,16),

> "1. District Judge Naidoo acted unjustly because of a serious procedural irregularity in making orders for possession, for payment for occupation or use and for costs (except in so far as they related to the costs of the preliminary issue) on 23 September 2025.
>
> 2. By order of Deputy Circuit Judge Blake dated 14 July 2025, it was ordered that the court would determine, as a preliminary issue, 'the legal status of the Defendant's occupation of the Property' and give further allocation and directions thereafter. The Defendant was ordered to file and serve any witness statement on which she wished to rely, which was to be solely limited to the preliminary issue. The Claimants evidence (a witness statement of Barney Smith dated 23 July 2025) was also limited to the preliminary issue. The preliminary issue was heard on 8 September 2025 and judgment was given on it at the hearing on 23 September. Having determined the preliminary issue, the District Judge ought to have given directions to allow for both parties to put in evidence on the other issues in the proceedings, including whether, as contended by the Respondent, the Appellant was in breach of clause 5 of the part of the Tenancy Agreement headed 'Tenant's Obligations'. Instead, without previous warning, the District Judge required the Appellant to make submissions on why the claim was genuinely disputed on grounds which appear to be substantial and proceeded to hold that it was not."

Mr Adams' submissions on ground 2

131. Mr Adams submits that as the Respondent has conceded Ground 3 of the grounds of appeal, ground 2 need not be considered.

132. However, as I have been addressed as to ground 2, I give my findings in relation to it below.

Finding as to ground 2

133. At the hand down hearing before the District Judge on 23 September 2025, Counsel for the Respondent at that hearing (who was not Mr Adams) requested that the District Judge make a possession order. The Respondent has offered no explanation how this request could properly be made in the light of the order of Deputy District Judge Blake on 28 May 2025.

134. I find that the District Judge erred in law or procedure in making a possession order because Deputy District Judge Blake had ordered on 28 May 2025 that after the preliminary issue as to the status of the Claimant's occupation of the Property had been determined, the Judge would allocate the case to a track and order directions. The Appellant came prepared, as a litigant in person, to address the preliminary issue and nothing else. In those circumstances, the District Judge's decision to accede to the Respondent's request that possession be entered was wrong or unjust because of a serious procedural irregularity within the meaning of CPR 52.21.

135. I find that the Appellant has proved ground 2 of the Grounds of Appeal and that the possession order must be set aside.

Ground 3: lack of evidence

136. In the amended Particulars of Claim, it is said (tab 9, 46-50 at 47),

> "4. b Alternatively, the Claimant is seeking possession of the Property because the Defendant has acted in such a way that is in breach of the terms of the Occupancy Agreement.
>
> ...
>
> (iii) The Defendant's neighbours, Elena Garcia-Alvarez of and Tim Sheppard of 33 Digby Crescent, London, N4 2HS, have obtained a determination at Court under claim number K04EC512 that the Defendant has caused and pursued a campaign of harassment against them; caused them undue distress and harm and caused them nuisance. A copy of the Order and Judgment in claim number K04EC512 dated 20 December 2024 is attached to these Particulars of Claim at pages 32 – 58 of Schedule A."

137. The Appellant stated in her amended Defence and Counterclaim at paragraph 2.9A, bullet point 2 (tab 10, 124),

> "Improper reliance on third-party litigation: The Claimant is relying on an injunction obtained by neighbours at 33 Digby Crescent, to which it was not a party, and which is currently under appeal before the High Court."

138. In her judgment, the District Judge referred to paragraph 2.9, second bullet point of the amended Defence and Counterclaim, dated 23 May 2025, but made no finding upon it.

139. In her reserved judgment the District Judge says (tab 6, 33-39 at 36),

> "12. The Defendant argues that:
>
> ...
>
> d. The Claimant is improperly relying upon findings in other proceedings between the defendant and other members of the co-operative to say that the Defendant is in breach of the agreement and therefore serve notice to quit. (That is not strictly relevant to the determination before the court today)."

140. In her order made on 23 September 2025 (drawn 25 September 2025), the District Judge said,

> "AND UPON the court seeking any submissions from the Defendant on why the claim, in light of the court's determination

> on the preliminary issue, was genuinely disputed on grounds that appear to be substantial and explaining the meaning of that
>
> ...
>
> AND UPON two of the Defendant's neighbours having brought a claim against her for an injunction and damages pursuant to the Protection from Harassment Act 1997 which was heard by Her Honour Judge Bloom in claim number K04EC512 and resulted in both an injunction being granted and damages being awarded on 20th December 2024; and upon the Claimant relying upon the same as a breach of the licence agreement which permitted them to serve notice to quit
>
> AND UPON the court being bound by the findings of the Circuit Judge and the Claimant being entitled to rely upon them as a breach of the contractual licence
>
> ...
>
> AND UPON the court determining that the claim is not genuinely disputed on grounds that appeared to be substantial."

Ms Wicks' submissions on ground 3

141. In the Grounds of Appeal it is said (tab 2,16-17),

> "1. District Judge Naidoo was wrong to hold that the court was bound by the findings of HHJ Bloom in Claim Number K04EC512 (being proceedings between Elena Garcia-Alvarez and Tim Sheppard as Claimants and the Appellant as Defendant) ('the Findings') and to hold that the Respondent was entitled to rely upon the Findings as evidence of a breach of the Appellant's contractual licence justifying termination.
>
> 2. Under the rule in *Hollington v F Hewthorn & Co Ltd* [1943] KB 587, the Findings were inadmissible as evidence in this claim; not only was the District Judge not bound by them, they could not be referred to or relied upon by the Respondent to make out its case against the Appellant."

142. Ms Wicks submits that the findings in case number K04EC512 were inadmissible. She says in in her skeleton argument,

> "36. However, these findings are not admissible evidence in these proceedings. It is well-established that (subject to certain exceptions, which are not relevant here) a judgment in personam (whether delivered in civil or criminal proceedings) is not evidence of the truth either of the decision or of its grounds (whether findings of fact or the legal consequences of those findings) between a party (such as Ms Hitchens) and a stranger

> (such as the Landlord): Phipson on Evidence, 20th edn, para. 43-77, 43-79; *Hollington v F Hewthorn & Co Ltd* [1943] KB 587; *Rogers v Hoyle* [2014] EWCA Civ 257; [2015] QB 265 at [79]-[104]."

Mr Adams' submissions on ground 3

143. In his skeleton argument, Mr Adams says,

> "27. It is accepted that Ground 3 is correct for the reasons set out in Ms Hitchens' appeal skeleton at ¶¶ 33 to 36.
>
> 28. The Judge should therefore have concluded that the possession claim was genuinely disputed on grounds which appear to be substantial for the purposes of CPR r. 55.8 and given directions to determine whether the contractual conditions for service of notice to quit were made out as a matter of fact."

Finding as to ground 3

144. I find the District Judge erred in law when she stated in her order made on 23 September 2025 that the Court was bound by the findings of HHJ Bloom in claim number K04EC512. It is well established law from *Hollington v FW Hewthorn & Co Ltd* [1943] KB 587 that a judgment in personam is not evidence of the truth, either of the decision or of its grounds between a party (such as the Appellant) and a stranger (such as the Respondent). The District Judge erred in law in admitting the findings in claim no. K04EC512 in evidence in these proceedings and was wrong to hold that those findings comprised authority binding her.

145. As a consequence, I find that paragraphs 3, 4 and 6 of the order of the District Judge dated 23 September 2025 must be set aside.

Conclusion

146. I allow the appeal on all three grounds of appeal.

147. I set aside the order of the District Judge, dated 23 September 2025 (drawn 25 September 2025).

148. I vary the order of the District Judge, pursuant to CPR 52.20(2)(a) and declare that the Appellant has a contract for a 90-year lease, pursuant to s.149(6) Law of Property Act 1925.